

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN SENATE MAY 6, 2003

AMENDED IN SENATE APRIL 24, 2003

SENATE BILL

No. 335

Introduced by Senator Romero
(Coauthor: Senator Kuehl)
(Coauthor: Assembly Member Hancock)

February 19, 2003

An act to add Title 6 (commencing with Section 40000) to the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 335, as amended, Romero. Corporations: Corporate Three Strikes Act.

Existing law sets forth requirements and procedures for the formation of corporations, partnerships, and limited liability companies and for the transaction of intrastate business by these entities.

This bill would enact the Corporate Three Strikes Act, which would require general corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, partnerships, and limited liability companies that are convicted of certain felony crimes to meet specified reporting requirements. The bill would also prohibit repeat offenders, as defined, from incorporating, forming, or transacting business in this state. The bill would require the Secretary of State and the Attorney General to enforce the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Title 6 (commencing with Section 40000) is added to the Corporations Code, to read:

TITLE 6. CORPORATE THREE STRIKES ACT

40000. This title shall be known and may be cited as the Corporate Three Strikes Act.

40001. The Legislature finds and declares all of the following:

(a) Some corporations and other entities authorized under the Corporations Code repeatedly violate the law and, if caught, pay relatively insignificant amounts that they pass on to the public as a cost of doing business. This practice is a gross injustice both to the public and to law-abiding businesses, and also undermines a healthy California economy.

(b) Threats of imprisonment are meaningless when directed at corporations and other entities that under the law are fictional persons, because there is no way to imprison a fictional person.

(c) The courts have long held, however, that corporations and other such fictional persons are mere artificial creatures of law and may be dissolved or denied permission to do business if they violate the law. The statutes of California permit these remedies, but public authorities rarely use them.

(d) Therefore, to protect the people and economy of the State of California, the Legislature declares that no entity subject to this title shall be authorized by the State of California to do business if it has been convicted of three or more felony crimes as specified in this title.

40002. (a) This title applies to the following entities:

(1) General corporations subject to Division 1 (commencing with Section 100) of Title 1.

(2) Nonprofit public benefit corporations subject to Part 2 (commencing with Section 5110) of Division 2 of Title 1.

(3) Nonprofit mutual benefit corporations subject to Part 3 (commencing with Section 7110) of Division 2 of Title 1.

(4) Partnerships subject to Title 2 (commencing with Section 15501).

(5) Limited liability companies subject to Title 2.5 (commencing with Section 17000).

(b) This title does not apply to nonprofit religious corporations subject to Part 4 (commencing with Section 9110) of Division 2 of Title 1, or to corporations sole subject to Part 6 (commencing with Section 10000) of Division 2 of Title 1.

40003. (a) An entity subject to this title is a repeat offender if it has three or more strikes against it within any 10-year period after the effective date of this title.

(1) For purposes of this title, a strike against a wholly owned subsidiary shall also be considered a strike against the parent entity.

(2) For purposes of this title, the following terms shall have the following meanings:

(A) “Conviction” means a judgment or conviction by a court of competent jurisdiction in the United States, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(B) “Felony crime” means a crime that would be classified as a felony under Section 17 of the Penal Code if the crime were committed in California, or a federal crime that is classified as a class A, B, C, D, or E felony, as defined in Section 3559 of Title 18 of the United States Code.

(C) “Strike” means the conviction of a felony crime arising from any violation of fraud, tax, bribery, extortion, consumer protection, environmental protection, civil rights, labor, employment, antitrust, political campaign, or finance law.

(b) A repeat offender shall not be incorporated, formed, or transact intrastate business in California if its third *or subsequent* strike was a conviction by a state or federal court in California or if the facts giving rise to the ~~conviction~~ *third or subsequent strike* occurred in California.

(c) An entity subject to this title shall not be incorporated, formed, or transact intrastate business in California if a majority of its directors or officers were directors or officers of a repeat offender when it became subject to subdivision (b), as determined by the Secretary of State after notice to the entity and an opportunity for the entity to respond.

(d) An entity subject to this title shall not be incorporated, formed, or transact intrastate business in California if it is legally controlled by an entity with a majority of directors or officers who

1 were directors or officers of a repeat offender when it became
2 subject to subdivision (b), as determined by the Secretary of State
3 after notice to the entity and an opportunity for the entity to
4 respond.

5 40004. Multiple convictions arising out of the same facts and
6 circumstances and heard by the same court shall be considered one
7 conviction for purposes of this title.

8 40005. (a) An entity subject to this title that is formed under
9 the laws of this state or is qualified to transact intrastate business
10 in this state shall file with the Secretary of State an annual
11 statement of any criminal convictions against the entity during the
12 previous year. *No statement shall be filed if there are no*
13 *convictions to report.*

14 (b) The Secretary of State shall prescribe an electronic form for
15 submission of these statements and shall make them available to
16 the public in a timely fashion through the Secretary's Internet Web
17 site. A statement shall be accessible on the Web site of the
18 Secretary for a minimum of 10 years.

19 (c) *If the entity is a wholly owned subsidiary of another entity,*
20 *the statement shall also indicate the following information:*

21 (1) *The parent entity's name.*

22 (2) *The parent entity's place of incorporation.*

23 (3) *Whether the parent entity is authorized to transact*
24 *intrastate business in California.*

25 40006. (a) If a repeat offender is a corporation formed under
26 the laws of this state, and its third *or subsequent* strike was a
27 conviction by a state or federal court in California or if the facts
28 giving rise to the ~~conviction~~ *third or subsequent strike* occurred in
29 California, the Attorney General shall bring an action under
30 Section 1801, 6511, or 8511, as applicable, to dissolve the
31 corporation and provide for forfeiture of its corporate existence.

32 (b) If a repeat offender is a partnership or limited liability
33 company formed under the laws of this state, and its third *or*
34 *subsequent* strike was a conviction by a state or federal court in
35 California or if the facts giving rise to the ~~conviction~~ *third or*
36 *subsequent strike* occurred in California, the Attorney General
37 shall bring an action under Section 803 of the Code of Civil
38 Procedure for unlawful exercise of a franchise.

39 (c) If an entity is subject to subdivision (a) or (b), the court may
40 appoint a receiver to take over and manage the business and affairs

1 of the entity, and to preserve its property, *pending its final*
 2 *dissolution and forfeiture*. The court shall issue orders, decrees,
 3 and injunctions as justice and equity require, consistent with the
 4 purposes of this title, and shall specifically issue orders necessary
 5 to ensure that jobs and wages are not lost, to protect community
 6 interests and legitimate investor interests, and to maintain the
 7 entity's obligations to protect the health, safety, and environment
 8 of workers and the public.

9 40007. (a) If a repeat offender is an entity formed under the
 10 laws of a jurisdiction other than this state and is qualified to
 11 transact intrastate business in this state, and its third *or subsequent*
 12 strike was a conviction by a state or federal court in California or
 13 if the facts giving rise to the conviction occurred in California, the
 14 Secretary of State shall, after a fair hearing and on the basis of
 15 substantial evidence that the entity is a repeat offender, ~~revoke~~
 16 *order forfeiture of* the entity's qualification to transact intrastate
 17 business.

18 (b) The date of ~~revocation~~ *forfeiture* shall be delayed until the
 19 Secretary of State has determined on the record of a hearing that
 20 the intrastate business will be replaced in a manner that assures
 21 jobs and wages are not lost, community interests and legitimate
 22 investor interests are protected, and the obligation of the entity to
 23 protect the health, safety, and environment of workers and the
 24 public is maintained.

25 40008. (a) In addition to all other civil and criminal
 26 remedies, an entity subject to this title that has committed a first
 27 ~~or second~~ strike offense shall publish the details of its offense in
 28 a full page ~~advertisement~~ *statement* in the largest newspaper of
 29 general circulation in California ~~and in the largest newspaper of~~
 30 ~~general circulation in any community in California in which the~~
 31 ~~offender transacts business.~~

32 (b) *In addition to all other civil and criminal remedies, an entity*
 33 *subject to this title that has committed a second strike offense shall*
 34 *publish the details of its offense in a full page statement in the six*
 35 *largest newspapers of general circulation in California.*

36 ~~40009. (a) Neither the Attorney General nor the Secretary of~~
 37 ~~State has discretion to refuse to enforce their respective duties set~~
 38 ~~forth in this title.~~

39 (b)

1 40009. (a) A person may petition the Attorney General or the
2 Secretary of State to enforce this title against a repeat offender or
3 a first or second strike offender.

4 ~~(e)~~

5 (b) If the Attorney General or the Secretary of State rejects the
6 petition, or fails to act within 180 days of the submission of the
7 petition, a person may bring an action for a writ of mandate to
8 compel enforcement of this title.

9 (d) The person bringing the action for writ of mandate shall be
10 entitled to an award of costs and reasonable attorney's fees if he or
11 she is the prevailing party.

12 SEC. 2. The provisions of this act are severable. If any
13 provision of this act or its application is held invalid, that invalidity
14 shall not affect other provisions or applications that can be given
15 effect without the invalid provision or application.

